

**Collaborative Approach to Water Supply Permit Evaluation: US Army Corps of Engineers,  
Colorado Department of Natural Resources, US Environmental Protection Agency  
Scope of Work  
18 November 2010**

**Introduction.** The Corps of Engineers is currently involved in evaluating a number of water supply projects affecting the water supply for the “front range” of Colorado (an area encompassing the communities stretching along the east side of the Rockies from roughly Colorado Springs in the South and Fort Collins in the North) to determine whether these projects will be granted Clean Water Act Section 404 permits. Many of the projects being considered are quite large and require the preparation of an Environmental Impact Statement under NEPA. As part of this process, the Corps must consult with the US Environmental Protection Agency (Region 8, Denver), which has oversight authority and can challenge or even veto the Clean Water Act Section 404 permits. EPA and the Colorado Water Conservation Board (CWCB)/Colorado Department of Natural Resources (DNR) may also be Cooperating Agencies under NEPA for these projects. As part of their respective evaluations, the Corps and EPA must consider statements of water need, which often draw heavily on studies conducted by the CWCB/DNR.

The Corps and EPA both acknowledge difficulties in reaching agreement on different aspects of the projects, including purpose and need, range of alternatives, type and level of technical studies to be conducted, and what mitigation is required. The state and federal agencies agree that the complexities of the scientific and legal context, coupled with disagreements among stakeholders, have resulted in processes to release Draft EISs that may last as long as 5 years, at a cost of as much as \$5,000,000. The CWCB/DNR, Corps and EPA are frustrated with the issues surrounding the delays and are jointly concerned about responsible development of sufficient water supplies for future water needs and provision of reliable water supplies during a drought.

Accordingly, the three agencies have agreed to work collaboratively on methods, processes, or agreements that might introduce more consistency into the system, reduce time and costs to the applicants and agencies, while attempting to meet each agency’s goals and objectives. While collaboration to improve communication and understanding may improve the outcome of future water supply projects, the regulatory agencies are still responsible and accountable for their compliance determinations.

**Collaborative Approach Background.** Corps and EPA Region 8 managers and staff have already participated in a two-day joint training on dispute resolution, at which they learned new skills and shared perceptions of each other.

On July 6, the Corps, EPA, and representatives of the Colorado CWCB/DNR met to discuss whether the agencies could jointly address one or two major water supply issues which – if resolved – could save time on future permit decisions. After discussion, the agencies agreed to address the topic of water supply alternatives and storage options. This topic includes such considerations as the size of the water deficit, options for meeting that deficit, applicant water supply system’s tolerance for risk in cases of severe drought or system interruptions, and the need and methods for water storage.

The three agencies agreed that the first step in addressing this issue is for the three agencies to educate each other about their understanding of these issues and the consequences they believe are associated with alternative strategies. Because the State takes the lead in conducting studies of water supplies, the State will take the lead in preparing a presentation to describe what and how it has studied the needed water supplies, why it has concluded there is a deficit, and their estimates of the size of that deficit. The other two agencies will each analyze past permits and EISs and identify key issues that emerged during the processing of those permits and the NEPA process. The Corps will present an analysis of how it analyzed and decided controversial issues, and EPA will describe its major concerns during the permitting and NEPA processes and its recommendations to address these concerns.

During the July 6 meeting the agencies agreed that further communication is needed via a series of meetings, probably three 1-day meetings. However, subsequent discussions have focused on the possibility of a concentrated 2 or 3-day session, originally desired to take place in late October or early November. The current plan is to hold the 2 or 3-day session in late March or early April, 2011 in Denver or Boulder.

**Facilitator's Role in Collaborative Approach Meetings.** The agencies desire the services of a neutral facilitator to assist them in designing and conducting this session. The facilitator's "client" is the three-agency team, and the facilitator will have to be acceptable to all three agencies. THE FACILITATOR SHALL NOT TAKE A POSITION ON THE MERITS NOR RECOMMEND TO THE PARTIES WHAT THE SUBSTANTIVE RESOLUTION OF AN ISSUE SHOULD BE.

**Special Requirements.** The neutral facilitator must be acceptable to all three parties. Thus, please include the names of the neutrals you are proposing so they can be evaluated as part of our process.

**Tasks:**

**Task 1: Meeting Design:**

- a) The facilitator will meet (telephonically) with points of contact (POCs) for the three agencies to assess their understanding of the purpose and outcomes of the meeting.
- b) The facilitator will prepare a draft meeting agenda and format (including a description of any activities or processes that will be used) and circulate it to the POCs for discussion.
- c) If necessary, the facilitator will meet (telephonically) with representatives of the three agencies to get agreement of the agencies on the meeting format and agenda.
- d) The facilitator will prepare a final agenda and meeting format based on the agreement reached by the agencies.

**Task 2: Assistance with the Development of Advance-Reading Materials and Agency Presentations**

- a. In consultation with the agencies, the facilitator will identify what advance materials need to be prepared and determine what assistance the agencies need in preparing these materials.
- b. If requested, the facilitator will edit materials to ensure they are understandable, accessible, and address the points desired by the agencies.
- c. The facilitator will review the agencies' presentations to ensure they address the points desired by the agencies and are appropriate for the meeting

**Task 3: Meeting Facilitation and Documentation**

- a) The facilitator will lead the meeting, in accordance with the agenda and format agreed upon by the agencies.
- b) The facilitator will ensure each agency's positions concerning water supply need, including size of water deficit and options/alternatives to address the deficit, as well as conservation practices and effects to water supply systems' tolerance for risk are disclosed during the meeting. The facilitator will ensure that methods to evaluate and potentially address differing positions on these topics will be investigated.
- c) The facilitator will be responsible for recording major points and decisions reached by the agencies during the meeting and will prepare a draft summary of the meeting that will be understandable not only to meeting participants but also to staff of the agencies who did not participate in the meeting.
- d) Following participant review of this summary, the facilitator will compile any comments into a

final summary in a format that can serve as a reference document for briefing present and future agency staff on the issues involved in front-range water supply projects.

**Deliverables:**

Task 1:

- b) Draft meeting agenda and format
- d) Final meeting agenda and format

Task 3:

- c) Draft meeting summary
- d) Final meeting summary

**Schedule:**

Task 1: The draft agenda and format will be completed at least one month prior to the selected meeting date. The final agenda and format will be completed at least one week prior to the selected meeting date.

Task 3: The draft meeting summary will be completed within two weeks of the meeting date. The final meeting summary will be submitted to the agency POCs within one month of the meeting date.